



Order 2004-3-26

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 24th day of March, 2004

Essential Air Service at

LANCASTER, PENNSYLVANIA

under 49 U.S.C. 41731 *et seq.*

Served: March 29, 2004

Docket OST-2002-11450

**ORDER REESTABLISHING ELIGIBILITY
AND REQUESTING PROPOSALS
FOR ESSENTIAL AIR SERVICE**

Summary

By this order, the Department is requesting proposals for essential air service, with or without subsidy support, at Lancaster, Pennsylvania. Proposals are to be filed no later than 30 days after the service date of this order.¹

Background

By Order 2002-3-7, issued March 8, 2002, the Department tentatively concluded that Lancaster was within 70 driving miles of Philadelphia International Airport, and thus was ineligible to receive subsidized air service under the Essential Air Service program.² That order also tentatively allowed Chautauqua Airlines, Inc., to suspend all scheduled service at the community on May 1, 2002, but allowed for objections to the tentative findings.³ The community objected to the Department's actions and, by Order 2002-4-24, issued

April 29, 2002, the Department finalized its findings and conclusions. The community challenged the Department's decision in court, and the Department's actions were upheld by the United States Court of Appeals for the Third Circuit.⁴

¹ See Appendix A for a map.

² Section 332 of the Department of Transportation and Related Agencies Appropriations Act of 2000 (Public Law 106-69) prohibits the Department from paying subsidies under the Essential Air Service program at communities within 70 highway miles of large or medium hub airports; Philadelphia is a large hub.

³ After Chautauqua suspended service, Colgan Airways served Lancaster for a brief period from June 2002, through March 2003. The community has been without air service since then.

⁴ See *Lancaster Airport Authority v. United States Department of Transportation*, 60 Fed. Appx. 916 (3d Cir. March 21, 2003).

On December 12, 2003, the President signed into law Public Law 108-176, Vision 100--Century of Aviation Reauthorization Act (Vision 100). Section 409 of Vision 100 authorizes communities, such as Lancaster, to request that the Department review its decisions in all communities at which the Department had terminated subsidy eligibility during the period from the date of enactment, December 12, 2003, backward for two years. The law directs the Secretary of Transportation to consult with the Governors of the States or the Governor's designees, and to consider their certification as to the most commonly used route between the community and the nearest medium or large hub airport. The Department must then issue a decision as to the community's eligibility to receive subsidized essential air service.⁵ If a community is reinstated, it would be effective through September 30, 2007. The Lancaster Airport Authority (the Authority) submitted such a request for review of Order 2002-4-24 on February 26.

Request for Review

Lancaster is eligible to apply for reinstatement because the Department terminated its eligibility within the two-year window prior to enactment of Vision 100. As noted above, in accordance with Section 409 of Vision 100, the Authority, on February 26, 2004, filed for a review of the Department's action in Order 2002-4-24. The Authority states that, had the Department's decision been made based on a determination of the mileage of the most commonly used route, Lancaster would not have been subject to termination of eligibility for subsidized essential air service. The Authority requests that the Department review its prior action and issue an order finding Lancaster eligible for subsidized essential air service.

As part of its filing, and as required by Section 409 of Vision 100, the Authority submitted a "Certification of Governor Edward G. Rendell as to the Most Commonly Used Route Between Lancaster and Philadelphia International Airport." In his certification, Governor Rendell states "that the highway mileage of the most commonly used route between Lancaster, Pennsylvania and the nearest medium airport or large hub airport, specifically, Philadelphia International Airport, is 85.51 miles . . . which is certified to be the most commonly used route between Lancaster and the Philadelphia International Airport." Also, as required by Section 409, the Governor provided a detailed description of the entire itinerary from the center of Lancaster to the Philadelphia International Airport. See item #21 in Docket 11450 for the community's complete appeal, including the itinerary (http://dmses.dot.gov/docimages/pdf89/271040_web.pdf).

⁵ The Department must make a determination of subsidy eligibility not later than 60 days after receiving the request for review.

Decision

Upon consideration of the Request for Review submitted by the Authority, including the Certification of the Governor of Pennsylvania, we have determined that Lancaster is more than 70 miles from the Philadelphia International Airport, when measured by the most commonly used route between the two points. As a result, we will reinstate Lancaster's eligibility to receive subsidized air service under the Essential Air Service program through September 30, 2007, in accordance with 49 U.S.C. 41731 *et seq.* and Section 409 of Vision 100.

Request for Proposals

Since we have now determined the Lancaster is eligible to receive subsidized essential air service, we will request proposals for replacement air service. As discussed in detail below, we have recently streamlined our procedures for requesting proposals in response to a more competitive essential air service environment.

Carriers interested in filing proposals, with or without subsidy requests, should file them within 30 days of the date of service of this order. At the end of that period, our staff will docket the proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. Shortly afterwards, we will provide a summary of the proposals to the community and ask them to submit their final comments. We will give full consideration to all proposals that are timely filed.⁶

New Procedures

In the past, we have accepted *initial* carrier proposals, reviewed them, and then negotiated *final* proposals with each applicant before formally presenting the proposals to the communities and asking for their final comments. We found that a two-step process was generally necessary because, in most cases, the incumbent carrier was the only one interested. As a result, we were unable to rely on competition to discipline carrier subsidy requests, and communities had to wait on a protracted selection process. More recently, however, we have noticed that most orders requesting essential air service proposals have drawn interest from at least two carriers, and sometimes more. Under the circumstances, we expect that competition among multiple carriers will ensure reasonable subsidy requests, obviate the need for rate negotiations, and allow us to streamline the carrier selection process. We have decided to apply this new process, with some exceptions, to all carrier selection cases, including the instant case.

⁶ In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not proceed with the carrier-selection case. Instead, we simply rely on that carrier's subsidy-free service as proposed.

Consequently, interested carriers should prepare their proposals with every expectation that their initial proposals will also be their *final* and *only* proposals.⁷ We retain the discretion to further negotiate proposals with carriers when we deem it desirable; in such cases, of course, we will give all applicants the same opportunity. For example, we anticipate that we will continue to negotiate rates in cases where there is only a single interested carrier, as is typically the situation in Alaska. We also retain the discretion to reject outright all unreasonable or unrealistic proposals and to resolicit a new round of proposals. However, we anticipate that negotiation or rejection will remain only occasional exceptions to the rule.

We are here providing interested carriers with some basic information to serve as guidance when they prepare their proposals, but we will not prescribe a precise format for their proposals. We expect proposals to adequately describe the service being proposed and the annual amount of subsidy being requested. The applicants can make their own judgments as to the level of detail they wish to present; however, they might want to include proposed schedules as well as supporting data for their subsidy requests, such as projected block hours, revenues and expenses. We strongly encourage clear, well-documented proposals that will facilitate their evaluation by the affected communities and the Department. We do not anticipate any change in our selection criteria, or in the general provisions governing subsidy payments for essential air service.⁸

We expect proposals consisting of service, at a minimum, with two-pilot, twin-engine aircraft with at least 15 passenger seats, and offering a minimum of two or three round trips each weekday and weekend period from Lancaster to Philadelphia or Pittsburgh, or any other suitable hub offering convenient access to the nation's transportation system. We encourage proposals that meet those requirements in an efficient manner. Carriers are also welcome to propose more than one service option, if they choose; they need not limit themselves to those requirements if they envision other, potentially more attractive service possibilities—different hubs, for example—with subsidy requirements that remain competitive.

Historical Traffic

Historically, Lancaster has been a strong generator of traffic. We have included recent traffic for Lancaster in Appendix B. Lancaster received service to both Pittsburgh (by Chatauqua) and Philadelphia (by Mesa Airlines) in 1996 and 1997. From 1998 through Chatauqua's departure in May 2002, the community received service only to Pittsburgh. Colgan Airways provided Lancaster with service to Pittsburgh from June 2002, through March 2003.

⁷ For this reason, we will allow carriers 30 days to submit their proposals, rather than just 20 as in the past. Because the new procedures anticipate that a carrier's first proposal will also be its final proposal, we expect to enforce our filing deadlines more stringently than in the past. Carriers should not expect the Department to accept late filings. The additional 10 days will comfortably accommodate the additional time carriers may find necessary to prepare their proposals.

⁸ In selecting a carrier to provide subsidized essential air service, 49 U.S.C. 41733(c)(1) directs us to consider four factors: (1) service reliability; (2) contractual and marketing arrangements with a larger carrier at the hub; (3) interline arrangements with a larger carrier at the hub; and (4) community views. In addition, we have always given weight to the applicants' relative subsidy requirements.

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.⁹ Consequently, all carriers receiving Federal subsidy for essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. Because the Department is prohibited from paying subsidy to carriers

that do not submit these documents, all carriers that plan to submit proposals involving subsidy should be aware that the selected carrier will be expected to complete the required certifications. Interested carriers requiring more detailed information regarding these requirements, as well as copies of the certifications, should contact the Office of Aviation Analysis at (202) 366-1053.¹⁰

Community and State Comments

The community and state are welcome to submit comments on the proposals at any time. As noted earlier, however, we will provide a summary of the proposals to the civic parties and ask them to submit their final comments shortly after the end of the 30-day period for carrier proposals.

ACCORDINGLY,

This order is issued under authority delegated in 49 CFR 1.56a(f).

1. The Department finds that, measuring the most commonly used route, Lancaster, Pennsylvania is more than 70 highway miles from Philadelphia International Airport and is eligible to receive subsidized air service under the Essential Air Service program, through September 30, 2007;
2. We request that carriers interested in providing essential air service at Lancaster, Pennsylvania, submit their proposals, with or without subsidy requests, no later than 30 days after the date of service of this order. The proposals should be sent to the EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street S.W., Washington, DC 20590, with the title "Proposal to Provide Essential Air Service at Lancaster, Pennsylvania," Docket OST-2002-11450;¹¹
3. This docket will remain open until further order of the Department; and

⁹ The regulations applicable to these areas are: (1) 49 CFR Part 20 -- New restrictions on lobbying; (2) 49 CFR Part 21 -- Nondiscrimination in federally-assisted programs of the Department of Transportation -- Effectuation of title VI of the Civil Rights Act of 1964; 49 CFR Part 27 --Nondiscrimination on the basis of disability in programs and activities receiving or benefiting from Federal financial assistance; and 14 CFR Part 382 -- Nondiscrimination on the basis of disability in air travel; and (3) 49 CFR Part 29 -- Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants).

¹⁰ The certifications are also available on the web at <http://ostpxweb.dot.gov/aviation/index.html>.

¹¹ Questions regarding filings in response to this order may be directed to John McCamant at (202) 366-1060.

4. We will serve a copy of this order on the Mayor and airport manager of Lancaster, Pennsylvania, the Lancaster Airport Authority, the Governor of Pennsylvania, the Bureau of Aviation of the Pennsylvania Department of Transportation, and the air carriers and persons listed in Appendix C.

By:

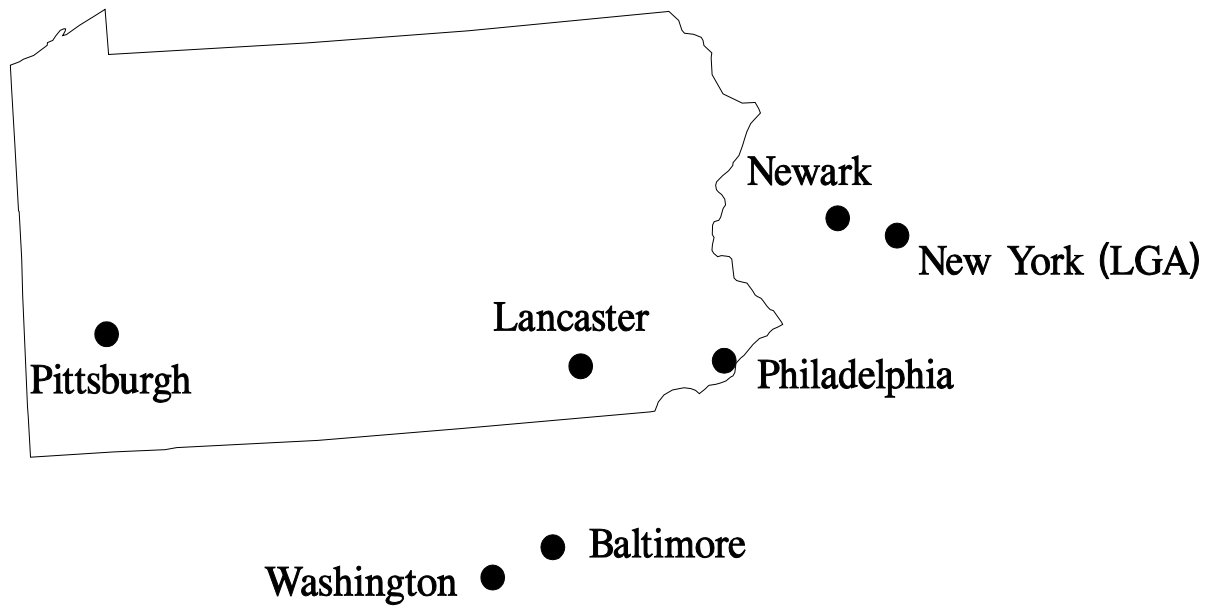
KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available
on the World Wide Web at <http://dms.dot.gov>*¹²

¹² Click on “Simple Search” and enter “11450” in the space provided for the docket number.

Map of Pennsylvania



Appendix B

Historical Traffic at Lancaster, PA

<u>Year</u>	<u>LNS--</u>	<u>--LNS</u>	<u>Total</u>	<u>Avg.daily enpl</u>
1996	18,092	18,948	37,040	49.4
1997	25,673	26,385	52,058	70.3
1998	26,571	31,805	58,376	72.8
1999	18,537	19,914	38,452	50.8
2000	13,662	14,808	66,921	37.3
2001	15,306	15,536	30,842	41.9
2002	10,529	10,497	21,026	28.8
2003*	1,094	1,202		

* Qtrs 1 and 2 only

Source: Form 41, T-100 and Part 298-C

SERVICE LIST

Air Midwest, Inc.
Air Wisconsin, Inc.
Amerijet International, Inc.
Chautauqua Airlines, Inc.
Chester County Aviation, Inc.
Colgan Air
Columbia Aviation, Inc.
CommutAir, Inc.
Corporate Air, Inc.
Corporate Airlines, Inc.
Delta Connection
Enterprise Airlines, Inc.
Heartland Aviation, Inc.
Henson Aviation Inc.
Horizon Air, Inc.
Jetstream International Airlines, Inc.
Long Island Airlines
Mesa Air Group, Inc.
Midwest Express Airlines, Inc.
New York Helicopter Corporation
Northcoast Executive Airlines, Inc.
Omniflight Helicopter Service, Inc.
Pennsylvania Aviation, Inc.
Southern Air Transport, Inc.
Westward Airways, Inc.

Ken Bannon
Grecorio Salas Calvo, Jr.
Doug Franklin
E.B. Freeman
Douglas Gumula
A. Edward Jenner
Lee Mason
Eric Nordling
Mark Prange
John Sinisi